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TOWNSEND AND TOWNSEND AND CREW, LLP			KRAMER, JAMES A	
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SAN FRANCISCO, CA 94111-3834			3627	

DATE MAILED: 01/06/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/832,513

Applicant(s)

BUNDY ET AL.

Examiner

James A. Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-16, 18-25, 30 and 31 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-16, 18-25, 30 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3, 5-7, 9-10, 14, 16, 20-21, 25 and 30-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston in view of Walker.

Woolston teaches a method and apparatus for creating a computerized market for used goods wherein sellers through consignment nodes can offer these items to buys via an auction.

With respect to **claim 1** Woolston teaches *a preregistration module coupled to said at least one server for identifying and verifying a user of said auction system wherein said preregistration module checks the credit history of said user and generates a registration record of said user* (column 5; lines 10-20). Examiner notes that establishing an account represents a registration record. Further, the use of well known credit card clearing techniques represents check or verifying a credit history (i.e. verifying the user has a proper credit record).

With further respect to **claim 1**, Woolston teaches *an assurance module coupled to said preregistration module for conducting a presale inspection of said merchandise item and to generate a merchandise inspection report* (column 2; lines 40-50; column 3, lines 42-46; column 4, lines 30-35 and column 18; lines 46-50).

Examiner notes that the system of Woolston relies on “consignment nodes” or third party individuals who are market leaders for a given used good (column 3, lines 42-46) . These nodes

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may take possession of a good and make an electronic presentment of the good (column 2, lines 45-46). Examiner asserts that this electronic presentment may include a subjective criteria, added by the consignment node in order to provide authenticity (column 4, lines 30-35). Examiner asserts that these features represent an Applicant's assurance module and the subjective criteria for authenticity represents an inspection report.

Examiner further supports these positions by noting that Woolston teaches the purpose of the consignment nodes are to provide verification of the good being sold/auctioned and provide assurance to the buyers that the item present is genuine (column 18, lines 46-50). As such, in order to provide the assurance of the bona fide nature of the goods and to provide subjective criteria as to authenticity, the consignment node must inspect the good prior to electronically presenting. Thus the information in the electronic presentation clearly represents an inspection report.

With further respect to **claim 1**, Woolston teaches *a description module coupled to said assurance module for displaying said merchandise inspection report and a description report of said merchandise item* (see column 2, lines 40-50 and column 4, lines 34-37). Examiner notes that a electronically presenting the goods represents the use of a display module to display the merchandise including the subjective criteria as to authenticity (inspection report) and a description report.

With further respect to **claim 1**, Woolston teaches *a bidding module coupled to said description module for processing a plurality of bids from a plurality of users, wherein said*

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bidding module analyzes each of said plurality of bids from each of said plurality of users to determine whether an incoming bid is higher or lower than a current high bid and to determine a current high bid (see column 5, line 46 – column 6, line 67);

With further respect to **claim 1**, Woolston teaches *a system database coupled to said at least one server for storing each of said plurality of bids from each of said plurality of users, said merchandise inspection report, said description report and said registration report* (Figure 1; column 3, lines 1-6 and 42-46); Examiner notes that the consignment node contains a system database coupled to the network server for storing all the information taught above with respect to claim 1.

With further respect to **claim 1**, Woolston teaches *a notification module coupled to said system database for assigning each of said plurality of bids with each of said plurality of users and to notify each of said plurality of users whether their bid is successful* (column 6, lines 30-32).

With respect to **claim 1**, Woolston teaches *wherein said plurality of users includes a buyer of said merchandise* (column 5, line 46- column 6, line 67).

With respect to **claim 1**, Woolston teaches *wherein said merchandise inspection report is displayed prior to said processing a plurality of bids from a plurality of users* (column 4, lines 30-38 and column 6, lines 21-27). Examiner once again points out that a consignment node

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adding subjective criteria to a good's text record for authenticity purposes represents an inspection report. Further, Examiner notes that column 6, lines 21-27 specifically teaches displaying the good's text record prior to receiving bids, as such the inspection report is clearly presented prior to the processing of bids.

With respect to **claim 1**, Woolston teaches *wherein auction system removes merchandise item is a seller of merchandise item does not agree with merchandise inspection report* (see for example column 17, lines 41-55). Examiner notes that Woolston teaches a de-post feature that may be used when a seller does not want the consignment node user to post the item any longer. Examiner interprets this as being applicable when a seller does not agree with the inspection report performed by the consignment node (e.g. impartial third party).

With respect to **claim 1**, Woolston teaches *that the inspection report is conducted by an impartial third part* (column 18, lines 46-53). Examiner asserts, that as the purpose of the consignment node is to present assurance and authenticity, the consignment node is an impartial third party.

With respect to **claim 1**, Woolson does not teach *the inspection report includes a warranty*. Walker et al. teaches conditional purchase offer system in which consignment shops validate, authenticate and guarantee a good. Examiner notes that the guarantee insures that the buyer has not purchased a counterfeit item or an item of unacceptable quantity (column 2, lines 63-67 and column 3, lines 40-52).

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As such, It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the inspection report of Woolston to include a warranty as taught by Walker. One of ordinary skill in the art at the time of the invention would have been motivated to combine the references as taught in order to insure that a buyer does not purchase an item of unacceptable quality.

Examiner makes special note that Walker is being relied upon to illustrate that at the time of the present invention, one of ordinary skill in the art would have reasonably known that a consignment node, upon providing an inspection report, would also provide a guarantee of the product inspected. Further, the fact that Walker teaches providing the warranty after receiving a bid from a buyer is not materially relevant. The only relevant timing is that the consignment node provides the warranty immediately after the inspection. The fact that the inspection and subsequent warranty of Walker differs from Applicant's invention is not relevant, since Woolston teaches the correct timing.

With respect to **claim 3**, Woolston teaches *wherein said preregistration module is a gatekeeper to a user's bidding qualification* (column 5; lines 10-20 and column 6, lines 10-14). Examiner notes that gatekeeper is interpreted as meaning that the preregistration module controls access to the system. Since the users of Woolston "log-on", the system controls access and thus acts as a gatekeeper. As such, Examiner asserts that the preregistratin module of Woolston is in fact a gatekeeper.

With respect to **claim 5**, Woolston teaches *wherein said description report includes multimedia descriptive content of said merchandise item* (column 6, lines 21-23). Examiner notes that posting an image and text of an item represents multimedia.

With respect to **claim 6**, Woolston teaches *wherein said description report include a member selected from the group consisting of text, an image, a video, an audio clip, streaming video and combinations thereof* (column 6, lines 21-23) See analysis of Claim 5 above.

With respect to **claim 7**, Woolston teaches *a merchandise locator module coupled to said description module to enable said user to search said system database* (column 7, lines 1-49 and column 9, lines 46-53).

With respect to **claim 9**, Woolston teaches *wherein said networked environment is selected from the group consisting of a worldwide computer network, the Internet, a wide area network, a local area network, and an intranet* (column 7, lines 50-66).

With respect to **claim 10**, Woolston teaches *wherein said bidding module is configured to accept said incoming bid manually* (column 6, lines 10-27). Applicant defines manual bidding in the Specification (page 14, line 8) as, “the bidder enters bids manually by repeatedly submitting bids.” Examiner notes that this is the exact process taught by Woolston.

With respect to **claim 14**, Examiner relies on the analysis provided for claim 1.

With respect to **claim 16**, Examiner relies on the analysis provided for claim 3.

With respect to **claim 20**, Examiner relies on the analysis provided for claim 9.

With respect to **claim 21**, Examiner relies on the analysis provided for claim 10.

With respect to **claim 25**, Woolston teaches *wherein said current high bid after a period of time is declared the winner* (column 6, lines 34-40).

With respect to **claim 30**, Woolston teaches *wherein said buyer of said merchandise item is free from providing any condition associated with said merchandise*.

Examiner notes that the buyer of Woolston merely searches and bids on an item and is never required to provide any information regarding the condition of the item.

Further, while it is not the Examiner's place to assume or presume what Applicant intends to claim, Examiner notes that Woolston teaches an embodiment in which the consignment node user and not the seller enters information with regard to the item and thus the seller is free from providing any condition associated with said merchandise (column 4, lines 15-38).

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Claims 2, 13, 15 and 24 rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston in view of Walker as applied to claim 1 above, and further in view of Admitted Prior Art.

With respect to **claims 2 and 15**, the combination of Woolston in view of Walker does not teach wherein said merchandise item is a heavy equipment item.

With respect to **claims 13 and 24**, the combination of Woolston in view of Walker does not teach wherein said heavy equipment item is selected from the group consisting of asphalt equipment, agricultural equipment, a compactor, a crane, a dozer, an excavator, a grader, a lift, a loader, logging equipment, an off-road truck, an on-road truck, paving equipment, power generating equipment, a scraper, a skidder, a trailer and a trencher.

Examiner took Official Notice in the Office Action dated 10/17/03, that the auctioning of heavy equipment (e.g. asphalt equipment, agricultural equipment, a compactor, a crane, a dozer, an excavator, a grader, a lift, a loader, logging equipment, an off-road truck, an on-road truck, paving equipment, power generating equipment, a scraper, a skidder, a trailer and a trencher) was old and well known in the art as a way for companies to either off load equipment they no longer need or to acquire equipment they need at a reduced cost. Applicant's failure to traverse this statement in the response submitted 2/17/04, nor in any subsequent replies, renders the statement Admitted Prior Art.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to use the auction system of Woolston in view of Walker to auction heavy equipment items (e.g. asphalt equipment, agricultural equipment, a compactor, a crane, a dozer, an excavator, a grader, a lift, a loader, logging equipment, an off-road truck, an on-road truck,

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paving equipment, power generating equipment, a scraper, a skidder, a trailer and a trencher) in order for companies to either off load equipment they no longer need or acquire equipment they need at a reduced cost, as is Admitted by Applicant.

Claims 8, 11, 19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston in view of Walker as applied to claim 1 above, and further in view of Fisher et al. (US Patent number 5,835,896).

With respect to **claims 8 and 19**, the combination of Woolston in view of Walker does not teach teaches *notification module notifies said user using a transmission selected from the group consisting of facsimile, telephone, electronic mail or wireless communication.*

Examiner notes that Woolston teaches “A particular bidder receives a special acknowledgement from the consignment node that her bid was accepted” (column 6, lines 30-32). However, as pointed out, Woolston does not specifically teach that how this “special acknowledgement” is transmitted.

Fisher teaches an electronic mail messenger that sends appropriate electronic mail messages to customers to inform them of the status of the auction (column 8, lines 15-29).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to transmit the special acknowledgement of Woolston via an electronic mail message as taught by Fisher. One of ordinary skill in the art would have been motivated to send an email acknowledgement in order to notify customer who are not on the network as the auction is updated (Fisher, column 6, lines 46-50).

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With respect to **claims 11 and 22**, Woolston does not teach teaches *wherein said bidding module is configured to accept said incoming bid by proxy*. Applicant defines proxy bidding in the Specification (page 14, lines 6-8) as, “the buyer automatically sets the maximum bid price and the system proxy bids up to that maximum bid point.”

Fisher teaches a submitting proxy bids, wherein proxy bids are a special bid type that allows the system to automatically bid on the bidder’s behalf up to a limited amount established by the bidder when his or her initial bid is placed (column 9, lines 19-22).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the manual bidding of Woolston to include proxy bidding as taught by Fisher. One of ordinary skill in the art would have been motivated to modify the references in order to allow the system to automatically bid on the bidder’s behalf up to a limited amount established by the bidder when his or her initial bid is placed.

Claims 12 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston in view of Walker as applied to claim 1 above, and further in view of Shemesh (US Patent number 6/847,939).

With respect to **claims 12 and 23**, the combination of Woolston in view of Walker does not teach *wherein said merchandise inspection report includes a member selected from the group consisting of merchandise video, merchandise audio, a 3-D virtual merchandise model, a virtual merchandise test drive, merchandise oil analysis, merchandise exhaust analysis and combinations thereof*.

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Shemesh teaches information provided to the client (buyer) from the server (consignment node or auction server) can be in audio format (merchandise audio) (column 5, lines 44-49).

Examiner notes that one of ordinary skill in the art would at the time of the present invention would reasonably know that providing merchandise audio to a user would enhance the shopping experience.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the description module of Walker to include presenting merchandise audio as taught by Shemesh. One of ordinary skill in the art at the time of the invention would have been motivated to combine these references in order to provide an enhanced shopping experience.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Woolston in view of Walker as applied to claims 1 and 14 above, and further in view of *Microsoft Computer Dictionary* (hereinafter MCD).

With respect to **claim 18**, the combination of Woolston in view of Walker does not specifically teach *wherein said description report includes streaming video of said merchandising item*.

Examiner uses MCD as evidence that streaming video is old and well known in the art. MCD provides the following definition of streaming: "On the Internet, the process of delivering information, especially multimedia sound or video, in a steady flow that the recipient can access as the file is being transmitted." (page 425). Examiner asserts that one of ordinary skill at the

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time of the invention would recognize that delivering information via streaming video enhances the viewing experiences.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the delivery of the description report of Woolston to include streaming video as taught by MCD. One of ordinary skill in the art would have been motivated to provide the information as streaming video to enhance the shopping experience.

Response to Arguments

Applicant's arguments filed 10/27/05 have been fully considered but they are not persuasive.

Applicant asserts that Woolston does not teach presale inspection. Examiner respectfully disagrees and will attempt to clarify the position of the Office. Examiner interprets the consignment node user of Woolston as the impartial third party who conducts the inspection report. The consignment node user is different from the actual owner of the item.

Examiner asserts that the electronic presentment made by the consignment node user which may include subjective criteria represents Applicant's assurance module and inspection report, (see analysis with respect to claim 1, as well as Woolston column 4, lines 30-35). This inspection is clearly done before the item is placed "for sale" on the network.

With respect to Walker, Examiner has admitted and continues to agree that the guarantee taught in Walker is submitted after a purchase agreement. Examiner again submits that this is not a relevant fact relied upon from Walker. Rather, Walker teaches that guarantees were old and well known in the art at the time of the invention. Examiner maintains the position that the

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timing of Woolston is correct (as explained above) and therefore the combination of Walker in view of Woolston renders obvious a presale inspection with a guarantee.

Applicant further asserts that Walker in view of Woolston fails to teaches removing merchandise if a seller does not agree with the inspection report. Examiner respectfully disagrees. Examiner believes the record is clear with respect to this newly added limitation as it has been addressed in the rejection (with respect to claim 1) above.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James A. Kramer whose telephone number is (571) 272 6783. The examiner can normally be reached on Monday - Friday (8AM - 5PM).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272 6771. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

James A. Kramer
Examiner
Art Unit 3627

jak

Michael Cuff 1/4/06
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PRIMARY EXAMINER